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9 BRIDGELOCK CAPITAL

ECF filed on:
JUL 07 2008

6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF NEVADA

8 In re:

9 ADALBERTO CANCIO,
10 MARIA A. GUERRERO,

Debtor(s)

CHAPTER 13
BANKRUPTCY NO.: 07-15249-BAM
DATE: 7/21/08
TIME: 9:30 a.m.

11 **SECURED CREDITOR'S BRIEF AND WITNESS/DOCUMENT LIST RE:**
12 **EVIDENTIARY HEARING ON OBJECTIONS TO CONFIRMATION OF**
13 **PROPOSED CHAPTER 13 PLAN**

14 BRIDGELOCK CAPITAL is a Secured Creditor in the above-entitled bankruptcy
15 proceeding and hereby submits the following Brief and Witness/Document List re: Evidentiary
16 Hearing on Objections to the Confirmation of that certain Chapter 13 Plan proposed by Debtors
17 dated September 6, 2007.

18 **FACTS**

19 1. The instant bankruptcy case was filed on or about August 22, 2007. This is the
20 third bankruptcy case filed by the Debtors in this jurisdiction: case no. 02-12434 was filed in
21 March 2002, and case no. 03-23216 was filed in October 2003.

22 2. On or about October 4, 2007, Secured Creditor filed its proof of claim in the
23 amount of \$17,844.71.

3. On or about September 6, 2007, the Debtors filed their proposed plan of reorganization, and only proposes to pay this Secured Claimant the amount of \$2,085.78 on its claim for pre-petition mortgage arrears.

4. On or about October 4, 2007, Secured Creditor filed its objection to the proposed plan of reorganization on the failure of the Debtors to accommodate its allowed secured claim. To date, the Debtors have failed to modify the plan of reorganization to accommodate this Secured Creditr's claim in the proper amount. The parties and Chapter 13 Trustee have sought an evidentiary hearing on the contested confirmation of the proposed Chapter 13 Plan. This hearing is set for July 21, 2008 at 9:30 am.

ARGUMENT

Secured Creditor's position is that the full amount of its allowed secured claim must be accommodated by the Debtor in its proposed Chapter 13 Plan of Reorganization before the Court may confirm the same. Secured Creditor, at this point, is unsure of the Debtors' position in the disputed/contested confirmation hearing and their continued failure to modify the plan of reorganization, and asserts that the clear and unambiguous operation of the United States Bankruptcy Code mandates denial of confirmation of the plan as proposed unless the Debtors accommodate the claim of this objecting creditor in full.

11 U.S.C. Sec. 1325 (the relevant portions to the instant dispute) provides for the requirements necessary for the confirmation of a debtor's plan of reorganization:

Sec. 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if –

(5) with respect to each allowed secured claim provided for by the plan –

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that —

(I) holder of such claim retain the lien securing such claim until the earlier of –

- (aa) the payment of the underlying debt determined under nonbankruptcy law; or
- (bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

- (i) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
- (ii) if-
 - (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly payment amounts; and
 - (II) the holder of such claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

As paragraph 5 clearly indicates, the plan may not be confirmed by this Court unless the Debtor's plan makes distribution in an amount "not less than the allowed amount of such [creditor's] claim."

In this case, Secured Creditor's claim (in the total amount of \$17,844.71) is indeed an 1)
"allowed" and 2) "secured claim" for purposes of 11 U.S.C. Sec. 1325(a)(5).

11 U.S.C. Sec. 101 (relevant portions only) defines a “secured claim”:

Sec. 101. Definitions

In this title—

(5) "claim" means —

1 (B) a right to payment, whether or not such right is reduced to
 2 judgment, liquidated, unliquidated, fixed, contingent, matured,
 3 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;
 4 (37) "lien" means a charge against or interest in property to secure payment of a debt or
 5 performance of an obligation;
 6 (51) "security interest" means lien created by an agreement;

7 In the case at hand, this creditor indeed holds a claim for payment by the Debtor for which "a
 8 charge against or interest in property" secures performance of that payment obligation. A copy of
 9 the subject security agreement and deed of trust demonstrating perfection of the security interest
 10 was attached to Secured Creditor's proof of claim dated October 4, 2007. The claim herein is
 11 indeed a "secured claim" pursuant to 11 U.S.C. Sec. 101.

12 Furthermore, this Secured Creditor's claim is "allowed," as the Debtor has failed to
 13 object to the same pursuant to 11 U.S.C. Sec. 502.

14 Sec. 502. Allowance of claims of interests

15 (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed,
 16 unless a party in interest, including a creditor of a general partner in a partnership that is a debtor
 17 in a case under chapter 7 of this title, objects.

18 In this case, the Debtor has not objected to the proof of claim dated October 4, 2007 filed by
 19 Bridgelock Capital. As such the claim is deemed "allowed" in its entirety pursuant to 11 U.S.C.
 20 Sec. 502.

21 Accordingly, this Creditor's claim falls within the purview of 11 U.S.C. Sec.
 22 1325(a)(5)(B), and the Debtor's plan of reorganization must accommodate Secured Creditor's
 23 allowed claim in its entirety. The statutory mandate for the full accommodation of Secured
 24 Creditor's allowed claim is unambiguous, and "where the words of the statute are clear, the
 25 court's inquiry begins and ends there." US v. Ron Pair Enterprises, 489 U.S. 235, 241 (1989).
 The Debtor's plan, as proposed, may not be confirmed.

WITNESS LIST

1. Scott Sawyer, PMK Peak Financial Services, servicer for Bridgelock Capital, c/o THE COOPER CASTLE LAW FIRM, LLP, 820 S. Valley View Blvd., Las Vegas, NV 89107.
2. Adalberto Cancio, Maria A. Guerrero, Debtors, c/o Terry Leavitt, Esq., 601 S. 6th St., Las Vegas, NV 89101.
3. Any and all witnesses that will be called by the Debtors herein.

DOCUMENTS LIST

1. Proposed Chapter 13 Plan of Reorganization dated September 6, 2007.
2. Proof of Claim of Bridgelock Capital dated October 4, 2007.
3. Objection to Confirmation of Debtors' Plan of Reorganization dated October 4, 2007.
4. Proof of Claim of Wilshire Credit Corp. dated April 15, 2002 (case no. 02-12434).
5. Objection to Confirmation by Wilshire Credit Corp. dated May 3, 3002. (case no. 02-12434).
6. Proof of Claim of Rescomm Holdings dated July 19, 2004 (case no. 03-23216).
7. Motion for Relief dated October 12, 2004 filed by Rescomm Holdings (case no. 03-23216).
8. Payment histor(ies) on the subject loan spanning March 1996 thru September 2007.
9. Court dockets for bankruptcy case nos. 02-12434 and 03-23216.

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1 10. Any and all documents filed herein as indicated on the docket for case no. 07-

2 15249.

3 Date: 7/7/08

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5 Michael W. Chen, Esquire
6 Nevada Bar No.7307
7 THE COOPER CASTLE LAW FIRM, LLP
8 Attorney for Bridgelock Capital
9 820 South Valley View Blvd.
10 Las Vegas, NV 89107

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15 ADALBERTO CANCIO,
16 MARIA A. GUERRERO,

17 Debtor(s)

18 CHAPTER 13
19 BANKRUPTCY NO.: 07-15249-BAM
20 Date: 7/21/08
21 Time: 9:30 a.m.
22 MOTION NO.:

23 **DECLARATION OF MAILING OF SECURED CREDITORS BRIEF AND**
24 **WITNESS/DOCUMENTS LIST RE: EVIDENTIARY HEARING ON OBJECTIONS TO**
25 **CONFIRMATION OF PROPOSED CHAPTER 13 PLAN**

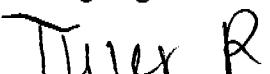
26 The undersigned hereby declares and certifies that on 7/7/08, 2008 a copy of
27 the Secured Creditors BRIEF AND WITNESS/DOCUMENTS LIST RE: EVIDENTIARY
28 HEARING ON OBJECTIONS TO CONFIRMATION OF PROPOSED CHAPTER 13 PLAN
29 was served on the following parties by depositing a copy of the same in the United States Mail,
30 postage prepaid and addressed to:

31 Terry Leavitt, Esq.
32 601 S. 6th St.
33 Las Vegas, NV 89101

34 Rick A. Yarnall
35 701 E. Bridger Ave. #820
36 Las Vegas, NV 89101

37 Adalberto Cancio, Maria A. Guerrero
38 1101 Cold Harbor Dr.
39 N. Las Vegas, NV 89030

40 I declare under penalty of perjury that the foregoing is true and correct.

41 
42 An employee of THE COOPER CASTLE LAW FIRM, LLP